

**State of California
California Regional Water Quality Control Board, Los Angeles Region**

Final Technical Staff Report

**Evidence in support of an
Amendment to the
*Water Quality Control Plan for the Coastal Watersheds
of Los Angeles and Ventura Counties***

**to Prohibit On-site Wastewater Disposal Systems
in the Malibu Civic Center Area**

**Technical Memorandum #1:
*Dischargers Have Poor Records of Compliance with Regional Board
Orders***

**by
Rebecca Chou,* Ph.D., P.E.
Chief, Groundwater Permitting Unit**

** The author would like to thank Regional Board staff, Joe Luera and interns Albert Chu and Shannon Liou for their assistance in preparing map, tables and graphs.*

November 5, 2009

Technical Memorandum 1: Dischargers Have Poor Records of Compliance with Regional Board Orders

by
Rebecca Chou, Ph.D., P.E.
Chief, Groundwater Permitting Unit

Background

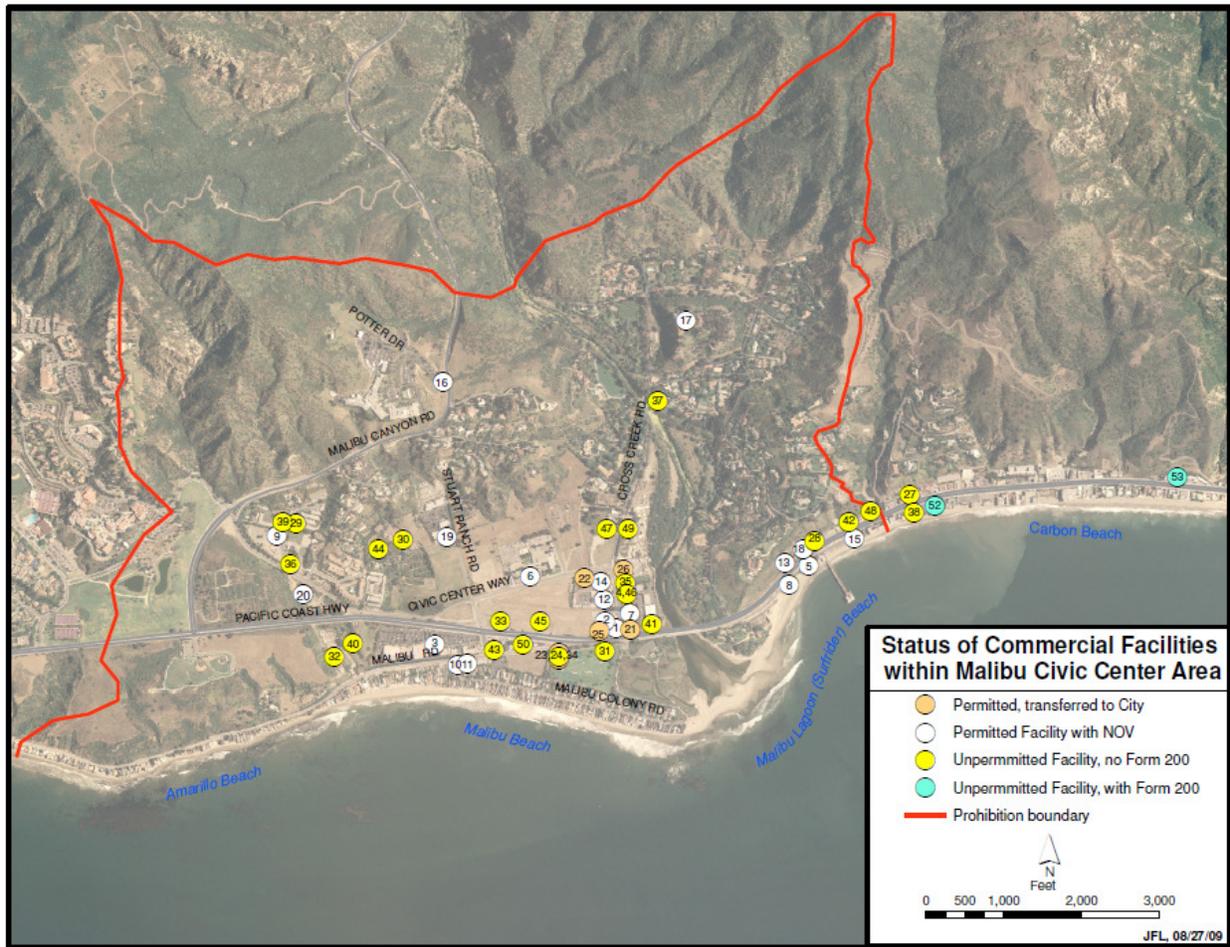
Without community sewers and wastewater treatment facilities and infrastructure, dischargers in the Malibu Civic Center area (Figure 1¹) use on-site disposal systems for discharge of wastewaters from residential, commercial, and other facilities.

The Regional Water Quality Control Board for the Los Angeles Region (Regional Board) and City of Malibu share oversight for discharges of wastewater in the City of Malibu, including the Civic Center area.² Pursuant to a memorandum of understanding (MOU) dated August 12, 2004, the Regional Board regulates discharges from commercial land use activities (including discharges from industrial, research, and public facilities) that have wastewater flows that exceed 2,000 gallons per day (gpd), by issuing Orders that specify waste discharge requirements (WDRs) for the privilege of discharging waste to waters of the State. Also pursuant to this MOU, the City regulates discharges from small commercial facilities with wastewater flows equal to or less than 2,000 gpd and from residential land uses.

¹ The area subject to the proposed prohibition is referred to as the Malibu Civic Center area (Figure 1). The area was defined using topographic features and drainage patterns, and encompasses the hydrologic areas of Malibu Valley (also referred to as the lower Malibu Creek watershed), Winter Canyon, and adjacent coastal strips including Amarillo Beach, Malibu Beach, Malibu Lagoon, and Malibu Lagoon Beach (aka Surfrider Beach, including First, Second, and Third Points at Surfrider). For more discussion on the prohibition boundaries defining the Malibu Civic Center area, refer to the Technical Staff Report Overview and the Environmental Staff Report.

² In 1952, when the Regional Water Quality Control Board for the Los Angeles Region (Regional Board) delegated authority for permitting septic systems to local land use agencies, the County of Los Angeles assumed responsibility for oversight of septic systems incorporated areas, including the area that subsequently incorporated as the City of Malibu in 1991. In the early 2000s, during re-assessments by all nine Regional Boards of permitting authorities delegated to local agencies, the Regional Board chose not to renew delegation (i.e. waivers of requirements to submit a Report of Waste Discharge) of permitting authority to local agencies. Rather, the Regional Board adopted a strategy of entering into Memoranda of Understanding (MOUs) with each municipality in the Los Angeles Region.

Figure 1: Commercial Facilities within Malibu Civic Center Area



Purpose and Methodology

The purpose of this memorandum is to provide an analysis of compliance with Orders issued by the Regional Board. (With limited exceptions, compliance information for dischargers under oversight by the City of Malibu was not available.)

To conduct the analysis, staff, including a team of college-level and graduate-school-level interns, reviewed 224 reports of self-monitoring submitted during the period starting with the fourth quarter 2004 through the fourth quarter 2008 from 19 dischargers except Malibu Lumber based on April 2009 monthly report. Dischargers who submitted reports of self-monitoring include government organizations (state, county, and special districts) and privately-owned organizations (commercial and industrial organizations) listed in the following Tables 1 and 2.

Table 1 - Permitted Discharges from the Public Sector

Discharger	Facility	Start of Permitted Discharge	# Reports Analyzed	
			Quarterly	Annual
California Department of Parks and Recreations	Malibu Pier State Park	9/26/2002	15	3
Los Angeles County Department of Public Works (LA DPW)	Malibu Administrative Center	10/8/2002	17	5
LA DPW	Fire Station No. 88	8/19/2003	17	5
LA DPW	Surfrider Beach	2/25/2003	17	5
LA DPW	Road Maintenance Yard 336	10/25/2002	17	4
LA DPW	Malibu Water Pollution Control Plant (Winter Canyon)	11/2/1998	17	5

Table 2 - Permitted Discharges from the Private Sector

Discharger	Facility	Start of Permitted Discharge	# Reports Analyzed	
			Quarterly	Annual
HRL	Hughes Research Lab	1/26/1998	17	4
Malibu Beach Inn	Malibu Beach Inn	3/13/2003	16	3
Malibu Bay Company	Malibu Colony Plaza	12/7/2000	17	2
Malibu Country Mart Limited	Malibu Country Mart I	1/30/2003	17	0
Malibu Cross Creek, LTD	Malibu Country Mart II	1/30/2003	17	0
Malibu Country Mart Limited	Malibu Country Mart III	12/12/2002	17	0
Malibu Creek Preservation	Malibu Creek Plaza Shopping Center	1/11/2001	17	5
City of Malibu and Malibu Lumber LLC ³	Malibu Lumber	April 2009 ⁴	1*	NA
Dave Whitehead	Malibu Shores Motel	12/19/2003	16	4
Morton Gerson	23730 Malibu Road	3/24/2003	16	1
Prudential Malibu Realty	Prudential Malibu Realty	8/28/2002	17	5

* April 2009 monthly report

³ Although the City owns the land on which the Malibu Lumber development is sited, this discharger is grouped with private sector instead of public sector.

⁴ A discharge from Malibu Lumber did not start until April 2009.

Three permitted dischargers, listed in Table 3, failed to submit any reports of self-monitoring as of April 2009. Although staff identified these cases of ‘failure to submit’ violations, staff was unable analyze compliance by these dischargers with technical requirements in their WDRs.

Table 3 – Permitted Dischargers from Private Sector-Failure to Submit Reports

Discharger	Start of Permitted Discharge	# Delinquent Reports	
		Quarterly	Annual
Jack in the Box # 160	1/23/2004	20	5
Miramar Building ⁵	3/18/2004	19	5
Serra Retreat Center	4/28/2004	19	5

Results

Each one of the 20 dischargers under Orders issued by the Regional Board has a record of violations, summarized in Table 4, including 8 facilities with advanced treatment systems. Among the most serious violations are repeated failures to achieve effluent limits specified in WDRs; in particular, limits for pathogens and nutrients (species of nitrogen and phosphorus) that are identified as pollutants in nearby waters that the Regional Board and EPA have designated as impaired.

Among the other violations included in Table 4 is tardy submittal of reports of self-monitoring required by the WDRs, and improper certifications of those monitoring reports – e.g. a perjury statement executed by a party not authorized to certify the accuracy of the results on behalf of the discharger, and/or modifications to the perjury statement language specified in a WDR.

Conclusion

Permitted and unpermitted facilities are listed in Table 5 and shown in Figure 1. Permitted dischargers of wastewaters with wastewater flows of more than 2,000 gpd in the Malibu Civic Center area – including both public and private organizations – have poor records of compliance with Regional Board Orders.

The compliance status for dischargers under oversight by the City of Malibu⁶, including small commercial dischargers and residential dischargers, has not been analyzed.

⁵ Although the Miramar Investment Company is landlord to offices occupied by the City of Malibu, staff has included this discharger with the commercial group of dischargers.

⁶ Although acknowledging that the City is compiling an Integrated Wastewater Management Information System (IWMIS), the Regional Board has expressed concern to the City of Malibu, in letters dated May 28, 2009 and June 23, 2009 (Appendix 1-1), about the accuracy of information identifying each property listed in IWMIS, and also the extent to which entries for each property have been populated with data needed to regulate discharges to achieve both protection of both public health as well as the quality of underlying groundwater and nearby surface waters.

Table 4 - Summary of Violations ***

Facility	TSO**	Non Submittal	Late Submittal	Non-reported Parameters	Discharge Violations	Perjury Statement	Material Change	Total Violation Counts
Fire Station No. 88*					77	1	1	79
HRL Laboratories		3	2			1		6
Jack In The Box		25						25
Malibu Administrative Center*					44	1	1	46
Malibu Colony Plaza	2	3	9		39	1	1	55
Malibu Beach Inn	2	3		4	33	1		43
Malibu Country Mart I	1	5	13	133		1		153
Malibu Country Mart II	1	5	14	133		1		154
Malibu Country Mart III	1	5	13	133		1		153
Malibu Lumber					18	1	1	20
Malibu Pier State Park*		4	7		1	1	1	14
Malibu Shores Motel		2	9		13	1	1	26
Malibu Creek Plaza Shopping Center (Malibu Village)	1		3		38			42
Malibu Water Pollution Control Plant*			9	400	235			644
Miramar Investment Co.		24						24
Morton Gerson Property		5	16		2			23
Prudential Malibu Realty			4					4
LA County Public Works Road Maintenance Yard*		1		3	120	1	1	126
Serra Retreat Center		24						24
Surfrider Beach*			4		3	1		8

*Public Sector

** Time Schedule Order

*** From quarterly reports during fourth quarter 2004 to fourth quarter 2008 for 19 dischargers, except Malibu Lumber from April 2009 monthly report. Bolded facilities have advanced treatment systems.

Table 5 Commercial Facilities within Malibu Civic Center Area as of April 2009

Map No	Facilities	Address	CI No.	Status
1	Prudential Malibu Realty	23405 W. Pacific Coast Highway (Hwy)	8447	Permitted Facility with NOV
2	Malibu Lumber & Hardware	23479 Pacific Coast Hwy	8695	Permitted Facility with NOV
3	Malibu Colony Plaza/ colony LLC	23705-23841 Malibu Road	8158	Permitted Facility with NOV
4	Cross Creek Plaza/Malibu Creek Preservation	3822 Cross Creek Road	8226	Permitted Facility with NOV
5	Malibu Pier State Park*	23000 Pacific Coast Hwy	8456	Permitted Facility with NOV
6	Malibu Admin. Center	23519 W. Civic Center Way	8469	Permitted Facility with NOV
7	Malibu Country Mart III	3900 Cross Creek Road	8512	Permitted Facility with NOV
8	Surfrider Beach	23060 W. Pacific Coast Hwy	8532	Permitted Facility with NOV
9	LACo. Dept. of Public Works - Road Maintenance Yard	3637 Winter Canyon Road	8471	Permitted Facility with NOV
10	Morton Gerson	23730 Malibu Road	8542	Permitted Facility with NOV
11	County of LA - Fire Station #88	23720 W. Malibu Road	8621	Permitted Facility with NOV
12	Malibu Country Mart I	3835 Cross Creek Road	8518	Permitted Facility with NOV
13	Malibu Shores Motel	23033 Pacific Coast Hwy	8693	Permitted Facility with NOV
14	Malibu Country Mart II	23410 Civic Center Way	6325	Permitted Facility with NOV
15	Malibu Beach Inn*	22878 Pacific Coast Hwy	8559	Permitted Facility with NOV
16	Hughes Research Lab Inc	3011 Malibu Canyon Road	6939C	Permitted Facility with NOV
17	Serra Retreat Center	3401 Serra Road	8743	Permitted Facility with NOV
18	Jack in the Box (Checker Board Properties Inc)	23017 Pacific Coast Hwy	8710	Permitted Facility with NOV
19	Mira Mar Properties-Office Bldg. W/ City Hall	23805 Stuart Ranch Road	8631	Permitted Facility with NOV
20	Malibu Water Pollution Control Plant	3260 Vista Pacifica Street	4673	Permitted Facility with NOV
21	Malibu Shell (Equilon)	23387 Pacific Coast Hwy	8513	Perm, transferred to City
22	Partners LLC	23440 Civic Center way	8587	Perm, transferred to City
23	Malibu Road, LLC	23700 Malibu road		Perm, transferred to City
24	23676-23712 Malibu rd	23700 Malibu road	8535	Perm, transferred to City
25	The Malibu Animal Hospital	23421 Pacific Coast Hwy	8711	Perm, transferred to City
26	Partnership	3806 Cross Creek Road	8361	Perm, transferred to City
27	Kentucky Fried Chicken*	22751 Pacific Coast Hwy		Unpermitted Facility, no Form 200
28	Malibu Inn Restaurant & nightclub*	22969 Pacific Coast Hwy		Unpermitted Facility, no Form 200
29	Webster Elementary School	3602 Winter Canyon		Unpermitted Facility, no Form 200
30	Rackett Club	23847 Stuart Ranch		Unpermitted Facility, no Form 200
31	Malibu Colony HOA	23554 Malibu Road		Unpermitted Facility, no Form 200
32	Mesa LLC	23915 Malibu Road		Unpermitted Facility, no Form 200
33	Lisa Krasnoff	23655 Malibu Road		Unpermitted Facility, no Form 200
34	Aqua Lion Unique	23700 Malibu Road		Unpermitted Facility, no Form 200
35	So. Cal. Edison	3808 Cross Creek Road		Unpermitted Facility, no Form 200
36	Malibu Canyon Village Owners Associates	23901 Civic Center		Unpermitted Facility, no Form 200
37	Mariposa Land Company LTD	3728 Cross Creek		Unpermitted Facility, no Form 200
38	Casa Malibu at the Beach (310)456-2219	22752 Pacific Coast Hwy		Unpermitted Facility, no Form 200
39	Our Lady of Malibu Catholic Church	3625 Winter Canyon Road		Unpermitted Facility, no Form 200
40	Land Corp.	23900 Pacific Coast Hwy		Unpermitted Facility, no Form 200
41	Malibu Retail Acquisition Co.	23359 Pacific Coast Hwy		Unpermitted Facility, no Form 200

Map No	Facilities	Address	CI No.	Status
42	American Commercial Equities LLC	22917 Pacific Coast Hwy		Unpermitted Facility, no Form 200
43		23755 Malibu Road		Unpermitted Facility, no Form 200
44	Wave Property Inc	3542 Coast View Drive		Unpermitted Facility, no Form 200
45	Land Corp.	23641 Pacific Coast Hwy		Unpermitted Facility, no Form 200
46	JP Morgan Chase Bank National Association	3854 Cross Creek Road		Unpermitted Facility, no Form 200
47	Verizon South Inc.,	3705 Cross Creek Road		Unpermitted Facility, no Form 200
48	Allegria Restaurant	22821 Pacific Coast Hwy		Unpermitted Facility, no Form 200
49	Mariposa Land Company LTD	3738 Cross Creek Road		Unpermitted Facility, no Form 200
50	Chevron USA Inc.	23614 Pacific Coast Hwy		Unpermitted Facility, no Form 200
51	Malibu Surfrider Hotel	22541 Pacific Coast Hwy	pending	Unpermitted Facility, with Form 200
52	The Pier View	22718 Pacific Coast Hwy	pending	Unpermitted Facility, with Form 200
53	Malibu Sand Shopping Center	22333 Pacific Coast Hwy	pending	Unpermitted Facility, with Form 200



California Regional Water Quality Control Board
Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

May 28, 2009

Mr. Jim Thorsen
Manager, City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265-0950

Dear Mr. Thorsen:

Integrated Wastewater Management Information System (IWIMS) Notebooks

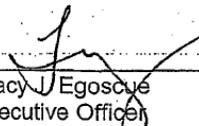
Your staff submitted several notebooks containing IWIMS Exhibits on May 7, 2009 during a public meeting of the Regional Water Quality Control Board for the Los Angeles Region. With this letter, we are returning these notebooks to you.

Staff's review of the notebooks, as well as reliance on data generated from IWIMS to identify commercial properties with on-site wastewater disposal systems, raises concern. These concerns include the accuracy of the information identifying each property listed in the IWIMS, and also the extent to which entries for each property have been populated with the data needed to regulate discharges from on-site wastewater disposal systems to achieve both protection of public health as well as protection of the underlying groundwater and nearby surface waters. We look forward to discussing these concerns, as well as other issues related to a Memorandum of Understanding, approved August 5, 2004, between the City of Malibu and the Regional Board. We have publicly noticed this meeting for June 17, 2009, and understand that you have issued similar public notice.

Also, we continue to wait for the modeling files for the City's risk assessment,¹ as requested several times by our staff. As most recently discussed with Craig George, we hope to have these data by May 29, 2009. Should you have questions about this request, please contact Ms. Elizabeth Erickson at (213) 610-2264.

Please do not hesitate to contact me, at (213) 576-6605, should you have questions about this letter.

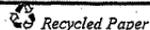
Sincerely,



Tracy J. Egoscue
Executive Officer
Enclosures

¹ "Risk Assessment of Decentralized Wastewater Treatment Systems in High Priority Areas in the City of Malibu," prepared by Stone Environmental, August 2004.

California Environmental Protection Agency



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California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Agency Secretary

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Arnold Schwarzenegger
Governor

June 23, 2009

Mr. Jim Thorsen
Manager, City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265-0950

Dear Mr. Thorsen:

Integrated Wastewater Management Information System (IWIMS) Notebooks

Your staff submitted several notebooks containing IWIMS Exhibits on May 7, 2009 during a public meeting of the Regional Water Quality Control Board for the Los Angeles Region (Regional Board). As the Memorandum of Understanding with the City of Malibu, including the information you presented in the notebooks, had not been publicly noticed, we returned these notebooks to you on May 28, 2009. Subsequently, during a public meeting of the Regional Board on June 4, 2009, your staff re-submitted the notebooks. Per your request at the meeting and in your letter dated June 3, 2009, we have forwarded the notebooks to our board members.

We are pleased that the City of Malibu has taken significant steps toward design and compilation of a database system to track the use of thousands of on-site wastewater disposal systems. However, as mentioned in our letter dated May 28, 2009, staff's review of the notebooks plus reliance on data generated from IWIMS to identify commercial properties with on-site wastewater disposal systems, raises concern. These concerns include the accuracy of the information identifying each property listed in the IWIMS, and also the extent to which entries for each property have been populated with the data needed to regulate discharges from on-site wastewater disposal systems to achieve both protection of public health as well as protection of the underlying groundwater and nearby surface waters.

In your letter dated June 4, 2009, you expressed a concern about the City's constitutional right to express its viewpoint. Please be assured that staff at the Regional Board do not intent to limit your constitutional rights. However, we suggest that a more appropriate time to have submitted the notebooks would have been when we agendized the topic of the Memorandum of Understanding (MOU), approved August 5, 2004, between the City of Malibu and the Regional Board. In this regard, the public would have had notice of this issue and an ability to review information presented to the Board. We are sensitive to the legal requirement that all interested parties have access to the same information that is given to the Regional Board on matters that the Regional Board has discussed, is discussing, or will discuss at Board meetings.

As a legal matter, Government Code section 11125.1 deals with the fact that documents given to the Board members are considered disclosable pursuant to the Public Records Act and should be made available to the public who request copies of any such documents. This section does not address or support your concerns. Title 18, California Code of Regulations section 5572 refers to the Board of Equalization, so we assume you made that reference by mistake. However, even if that applied to the Regional Board, the substance of that section merely restates that documents submitted to government

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Mr. Jim Thorsen

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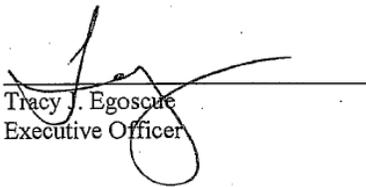
June 23, 2009

agencies are public records. We agree that destruction of public records is a crime, but we returned the documents to you and did not steal, remove, secrete, destroy, mutilate, deface, alter or falsify the documents in any way.

We agree that your monthly presentations to the Board have been helpful and educational. Please be aware that we must all be careful that those presentations do not cross into matters that the Board will be considering and taking action upon in the near future.

Please do not hesitate to contact me, at (213) 576-6605, should you have questions.

Sincerely,



Tracy J. Egoscue
Executive Officer

California Environmental Protection Agency

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November 5, 2009